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SUBJECT: UKRAINE'S LEGISLATIVE PROGRESS SINCE WTO ACCESSION

REF: KYIV 1027

¶1. (U) Summary. Ukraine's accession to the World Trade Organization (WTO) on May 16, 2008 was seen as a major step forward in the country's ongoing integration with the international economic system. With a few noted exceptions, Ukraine is living up to the terms of its WTO accession. One of central requirements for Ukraine's accession was that parliament amend its trade-related laws to bring its legal code into alignment with WTO guidelines. Ukraine enacted five key laws just prior to accession, and passed several more thereafter, but one year after accession, two required legal amendments are still unresolved. Further, one non-WTO-compliant law allowing the government to impose new tariffs as a balance of payments measure was enacted in February 2009, and with its expiration in September 2009 comes word of additional non-compliant protectionist tariff proposals being considered in parliament. End Summary.

¶2. (U) Ukraine's accession to the World Trade Organization (WTO) on May 16, 2008 was seen as a major step forward in the country's ongoing integration with the international economic system. As part of the accession process, the Verkhovna Rada (Ukraine's parliament) was required to pass or amend several pieces of legislation to bring the country's legal code into alignment with international standards on a variety of trade issues.

WTO-Compliant Regulations Passed, as Required

¶3. (U) Just prior to the accession date, the Verkhovna Rada enacted five pieces of legislation, amending laws on insurance; protection of national producers from subsidies, dumping and imports; foreign investment; protection of intellectual property rights; standards, technical regulations, and conformity assessment.

¶4. (U) Over the following year, the Verkhovna Rada continued to pass WTO-related legislation to bring Ukraine's legal code up to WTO standards. Amendments were made to the laws on grain export quotas; veterinary medicine; state support of book publishing; taxation of and subsidies for agricultural producers; grain storage; application of value added taxes to agricultural production and international transportation. In general, Ukrainian authorities are, to the best of their ability, operating in accordance with the provisions of these new laws and regulations. The USG actively provides technical assistance and training for Ukrainian officials and professionals on application of these amended trade laws in accordance with international best practices, especially in the area of intellectual property rights enforcement.

Non-Compliant Tariff Surcharges Expired

¶5. (U) One law passed by the Verkhovna Rada after WTO accession contained provisions that conflict with Ukraine's WTO obligations. Notably, the February 4th law "To Improve the Payment Balance of Ukraine in Connection with the World

Financial Crisis" established a special procedure for introducing temporarily increased import duties, which was not fully compliant with the WTO rules regarding balance of payment difficulties. This law expired on September 7th, 2009. Customs officials estimate that, in net terms, the decreased volume of trade and reduced sales tax revenue attributable to the tariff cost the GOU in excess of UAH 500,000 (USD 60,000).

Remaining Work

16. (U) Two pieces of legislation that are required to bring Ukraine's legal code fully into WTO compliance have not yet been passed into law. They are Draft Law no. 2297 "On Fish, other Living Aquatic Resources and Food Made of Them", which deals with Sanitary & Phyto-Sanitary (SPS) requirements and Technical Barriers to Trade (TBT) issues; and Draft Law no. 3322 "On Quality and Safety of Food Products and Food Raw Materials", which would define the legal parameters of the term 'standard', harmonizing it with international norms on food safety and quality. The first was deleted from the agenda of the Verkhovna Rada on February 3, 2009 and the second was revoked by the Cabinet of Ministers on May 20, 2009.

17. (U) In an effort to support the draft WTO-related legislation and make further progress toward harmonizing Ukraine's legal code with WTO requirements, President Yuschenko issued Decree 713 on September 4, 2009. This decree requires the Cabinet of Ministers to support the following Draft Laws in the Verkhovna Rada: 1365 on Market Surveillance; 2297 On Fish and Other Live Products (once it has been re-introduced on the agenda); 3301 On the Amendment of Article 1 of the Law On the Importation in Ukraine of Raw Cane Sugar; and 3421 On the General Safety of Products. Decree 713 further tasks the Ministers with writing and submitting legislation to the Rada on the following topics: On the Amendment of the Law On Standards, Technical Regulations and Procedures for Conformity Assessment - abolishing the requirement for manufacturers to register conformity statements; On the Amendment of the Law on Quality and Safety of Food Products - a revision to the bill revoked on May 20, 2009; On the Amendment of Certain Laws of Ukraine to Bring the Product Nomenclature in Compliance with the 2007 Harmonized System of Description and Coding of Goods - meets commitments in accordance with International Conventions in this area and brings import duty rates into accord with WTO accession requirements.

18. (U) Despite Ukraine's accession to the WTO, several GOU regulations continue to create costly problems for U.S. exporters attempting to operate in the Ukrainian marketplace. Recent implementation of a regulation long on the books but not enforced requires packaged goods to have a stamp on their import documents attesting to the existence of a waste recycling contract with the GOU monopoly UkrEcoComResursy. Fines are levied for non-compliance, even if importers have existing contracts with private waste management firms in Ukraine. Importers report to the Embassy that although they attempt to comply with this requirement, they are unable to reach anyone at UkrEcoCoResursy. On July 28, 2009, the Cabinet of Ministers published Decree no. 767 requiring all importers to provide a copy of the Shippers Export Declaration (SED) (filed with the U.S. Census) to provide a basis for the valuation of their goods. Enforcement of the decree is scheduled to begin on October 27th, 2009. U.S. law explicitly prohibits U.S. firms from providing the SED to foreign buyers in most cases. In addition, Ukraine has recently circulated a draft veterinary & phytosanitary regulation that would require any U.S. processing plant that wants to export animal-products (meat, seafood, genetic materials) to Ukraine to submit to inspections by the Ukrainian veterinary service. These types of problems create delays and additional expenses for U.S. firms. Furthermore, the GOU often fails to properly notify the WTO of new regulations affecting trade, such as those mentioned above.

However, when areas of non-compliance with WTO mandates are brought to GOU attention, officials usually make efforts (though not always effectively) to remedy the situation.

Comment

¶9. (SBU) Comment. Ukraine has made significant progress in aligning its legal code with the international norms stipulated by the WTO. However, the onset of the global financial crisis has spurred considerable protectionist sentiment in domestic industries, particularly the Ukrainian automotive sector. This has resulted in several power blocs in the parliament lending their support to WTO non-compliant tariff legislation as a means of harnessing populist sentiment in advance of upcoming elections, despite the harmful effects such measures have on budget revenue. Sources at the Ministry of Economy and Customs Office have told EmbOffs that they do not support the enactment of additional tariffs and that future non-WTO compliant measures may be enforced only against non-WTO members, such as Russia, Ukraine's largest trading partner. End Comment.

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